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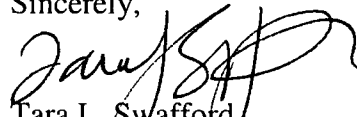
Pat Miller, Chairman
c/o Sharla Dillon, Docket Manager
TENNESSEE REGULATORY AUTHORITY
460 James Robertson Parkway
Nashville, Tennessee 37243

***Re: Tennessee Coalition of Rural Incumbent Telephone Companies and
Cooperatives Request for Suspension of Wireline to Wireless Number
Portability Obligations Pursuant to Section 251(f)(2) of the
Communications Act of 1934, as Amended
Docket No. 03-00633***

Dear Chairman Miller:

In support of the Amended Petition filed by the Tennessee Coalition of Rural Incumbent Telephone Companies and Cooperatives in Docket No. 03-00633, we submit for your consideration opinions from State Commissions in Ohio and Nebraska, both granting suspensions of local number portability obligations pursuant to 47 U. S. C. § 251(f)(2). Please feel free to contact me if you have any questions or concerns.

Sincerely,



Tara L. Swafford

TLS bb

cc: R. Dale Grimes, Esq. (w/enc.)
Thomas Moorman, Esq.
Stephen G. Kraskin, Esq.
Melvin J. Malone, Esq. (w/enc.)
Timothy Phillips, Esq. (w/enc.)
Edward Phillips, Esq. w/enc)

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of the Following)	
Companies for Suspension or Modification of	)	Case Nos.
the Federal Communications Commission's Re-)	
quirement to Implement Wireline-Wireless)	
Number Portability Pursuant to 47 U.S.C.)	
§251(f)(2):)	
Minford Telephone Company	)	04-428-TP-UNC
Kalida Telephone Company	)	04-429-TP-UNC
Wabash Mutual Telephone Company	)	04-430-TP-UNC
Ottoville Mutual Telephone Company	)	04-431-TP-UNC
Sycamore Telephone Company	)	04-432-TP-UNC
Germantown Independent Telephone Company	)	04-433-TP-UNC
Arthur Mutual Telephone Company	)	04-434-TP-UNC
Vaughnsville Telephone Company	)	04-435-TP-UNC
McClure Telephone Company	)	04-436-TP-UNC
New Knoxville Telephone Company	)	04-437-TP-UNC
Nova Telephone Company	)	04-438-TP-UNC
Sherwood Mutual Telephone Association Inc.	)	04-439-TP-UNC
Glandorf Telephone Company	)	04-440-TP-UNC
Bascom Mutual Telephone Company	)	04-441-TP-UNC
Ayersville Telephone Company	)	04-442-TP-UNC
Middlepoint Home Telephone Company	)	04-443-TP-UNC
Fort Jennings Telephone Company	)	04-444-TP-UNC
Benton Ridge Telephone Company	)	04-445-TP-UNC
Ridgeville Telephone Company	)	04-446-TP-UNC
Doylestown Telephone Company	)	04-447-TP-UNC
Buckland Telephone Company	)	04-448-TP-UNC
Farmers Mutual Telephone Company.	)	04-449-TP-UNC

FINDING AND ORDER

The Commission finds:

- (1) On March 31, 2004, as amended on May 6, 2004, a number of Ohio rural local exchange telephone companies, pursuant to 47 U.S.C. §251(f)(2), filed applications to suspend or modify the Federal Communications Commission's (FCC's) requirement to implement wireline-to-wireless local number portability (intermodal, local number portability or LNP). The applicants include the following companies: Minford Telephone Company (Minford), Kalida Telephone Company (Kalida),

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Wabash Mutual Telephone Company (Wabash), Ottoville Mutual Telephone Company (Ottoville), Sycamore Telephone Company (Sycamore), Germantown Independent Telephone Company (Germantown), Arthur Mutual Telephone Company (Arthur), Vaughnsville Telephone Company (Vaughnsville), McClure Telephone Company (McClure), New Knoxville Telephone Company (New Knoxville), Nova Telephone Company (Nova), Sherwood Mutual Telephone Association Inc. (Sherwood), Glandorf Telephone Company (Glandorf), Bascom Mutual Telephone Company (Bascom), Ayersville Telephone Company (Ayersville), Middlepoint Home Telephone Company (Middlepoint), Fort Jennings Telephone Company (Fort Jennings), Benton Ridge Telephone Company (Benton Ridge), Ridgeville Telephone Company (Ridgeville), Doylestown Telephone Company (Doylestown), Buckland Telephone Company (Buckland), and Farmer's Mutual Telephone Company (Farmer's Mutual) (jointly, "applicants").

Applicants seek interim relief from any intermodal, local number portability obligations pending the Commission's final determination of this application, as well as a suspension of any potential implementation of any local number portability obligations until a date not less than 180 days after a final non-appealable order is issued in response to the pending applications. Applicants explain that this request is appropriate in light of the lead time required to implement local number portability.

While recognizing that the FCC has determined that local exchange companies must implement local number portability to wireless providers,¹ each applicant contends that the Intermodal Order does not address issues relating to the routing of calls to ported numbers in those cases in which no direct connection exists between carriers. Further, the applicants assert that, in light of current routing arrangements, it is infeasible to complete calls on a local basis to telephone numbers ported to wireless providers.² Additionally, the applicants represent that, when the Commission considers the initial and ongoing costs of local number portability, the

¹ *In the Matter of Telephone Number Portability*, Memorandum Opinion and Order and Further Notice of Proposed Rule Making, CC Docket 95-116, November 10, 2003 (Intermodal Order).

² Applicants route calls terminating outside their respective service areas, including calls to wireless carriers without direct trunk groups, to interexchange carriers.

Commission will conclude that such costs create an adverse economic impact on the respective companies' telecommunications users and, to the extent that any costs are not recovered by an end user local number portability surcharge, on the individual applicants themselves. As a result, the applicants believe that it is not consistent with the public interest, convenience and necessity to expend the significant investment necessary to deploy local number portability.

Specifically, each company estimated the increase in a subscriber's monthly local service cost that would result from the implementation of local number portability. Consistent with 47 C.F.R. 52.33, this charge would remain in effect over a five-year recovery period. Additionally, each company estimated the total increase in a subscriber's local service cost if the company is required to absorb the cost of transporting calls to ported numbers outside of the applicant's local service area. Finally, each applicant calculated the percentage increase that these additional charges would signify in relation to the current monthly residential rate.

- (2) In conjunction to the filed petitions seeking a modification or suspension of its obligations to provision intermodal, local number portability, applicants filed a motion seeking protective treatment of cost and pricing data relevant to the implementation of local number portability and the relevant expense to each end user. This motion was granted pursuant to the Commission's Entry of May 19, 2004.
- (3) On April 15, 2004, Sprint Spectrum L.P. (Sprint) filed a motion to intervene in each of these proceedings. Concurrent with its motion to intervene, Sprint filed a memorandum contra applicants' motions, as well as an objection to the petitions. In support of its opposition to the requested relief, Sprint asserts that although applicants have been aware of their intermodal, local number portability obligations for five months the companies waited until the "eleventh hour" to seek relief from wireline-to-wireless obligations, rather than taking the appropriate steps to satisfy the May 24, 2004 deadline. Sprint advocates that applicants should be required to implement wireline-to-wireless local number portability as quickly as possible and not be granted a 6-month extension to implement local number portability.

Sprint asserts that, in order to grant a petition pursuant to Section 251(f)(2), a state commission must make two separate findings. First, it must find that the requested relief is necessary by one of the following:

- (a) To avoid a significant adverse economic impact on users of telecommunications services generally.
- (b) To avoid imposing a requirement that is unduly economically burdensome.
- (c) To avoid imposing a requirement that is technically infeasible.

Second, the state commission must also find that the requested relief is consistent with the public interest, convenience, and necessity. Sprint submits that a rural local exchange company seeking relief pursuant to Section 251(f)(2) of the Telecommunications Act of 1996 (1996 Act)³ must make a convincing showing that the statutory test has been met and that the granting of Section 251(f)(2) petitions should be the exception and not the norm.

In response to the applicants' contention regarding the undue economic harm, Sprint asserts that applicants have not demonstrated that implementing local number portability will result in an undue economic burden but, at best, have only speculated as to that result. For example, Sprint questions the accuracy of local number portability costs identified and calls attention to the fact that applicants themselves have pointed out that their costs are nothing more than estimates. Even based on these estimates, Sprint points out that Germantown's and Kalida's estimated increase in a subscriber's monthly local service rate resulting from the implementation of local number portability would be only \$1.00 and \$1.72 per month, respectively, for five years. In regard to Kalida, Sprint notes that its current monthly residential rate is only \$4.95.

Sprint posits that the more significant portion of the estimated local number portability costs relate to the estimated cost associated with transporting calls to ported numbers outside of

³ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996)

the respective local service area of applicants. Sprint contends that applicants' claims of the technical infeasibility of LNP actually center on issues related to the routing of calls. Sprint references the fact that the FCC has previously rejected arguments made by wireline carriers as to the infeasibility of local number portability based upon rating and routing concerns.⁴ Sprint believes that rural local exchange companies (LECs) will route calls to ported numbers in the same manner as if the wireless carrier had assigned the customer a number rated to that rate center (a non-ported number). Specifically, Sprint contends that rural LECs will route their customers' land-to-mobile local calls over the existing trunk group connecting their network to the LATA tandem switch, and the tandem switch will then forward the call to the mobile switching center. In support of its position, Sprint notes that none of the applicants have denied that they currently originate and successfully terminate calls to customers of wireless providers.

In response to the applicants' claims that none of their customers have made an inquiry regarding wireline-to wireless local number portability, Sprint fails to see how such a scenario leads to the conclusion that suspension of local number portability is in the public interest. Sprint believes that it is more likely that the applicants have not received inquiries for intermodal, local number portability due to the fact that wireless carriers will not advertise this option until the applicants begin to make it technically available.

Further, with respect to the issue of whether the requested suspension is consistent with the public interest, convenience, and necessity, Sprint contends that giving customers the opportunity to port their wireline telephone numbers to a wireless carrier is in the public interest because it supports competitive choice as contemplated by Section 251(b)(2) of the 1996 Act.

Although the applicants claim that the Commission should attempt to balance whether the benefits associated with wireline-to-wireless local number portability outweigh the costs, Sprint contends that the applicants have failed to provide citation for such authority or an explanation of how the Commission could

⁴ Intermodal Order at ¶39.

perform this analysis and calculate an expected level of demand.

- (4) On April 15, 2004, Cellco Partnership, Verizon Wireless LLC, New Par, Hamilton Cellular Telephone Company, Springfield Cellular Telephone Company, and GTE Wireless of the Midwest Incorporated (collectively, Verizon) filed a motion to intervene in Case Nos. 04-428, 04-429, 04-431, 04-432, 04-433, 04-435, 04-437, 04-438, 04-440, 04-441, 04-443, 04-444, 04-445, 04-448. Verizon represents that it has served a bona fide request upon the applicable LECs in the identified proceedings requesting the implementation of local number portability pursuant to the FCC's local number portability rules and orders. Verizon opines that if the LEC petitions are granted, consumers will not benefit from the services offered by Verizon unless they agree to accept a new telephone number upon receiving wireless service.
- (5) On April 23, 2004, Verizon filed an objection to the applications for suspension or modification of the local number portability mandate. Verizon objects to the petitions filed in 04-428, 04-429, 04-431, 04-432, 04-433, 04-435, 04-437, 04-438, 04-440, 04-441, 04-443, 04-444, 04-445, 04-448 for the following reasons: (a) the applicable LECs fail to meet the high legal standard for obtaining relief under the statute, and (b) the applicable LECs' requests are a collateral attack on the FCC's Intermodal Order.

Verizon states that, consistent with Section 251(f)(2) of the 1996 Act, the legal standard for obtaining a suspension or modification of the FCC's local number portability rules requires a stronger demonstration than that provided by the applicable LECs. Specifically, Verizon opines that the applicable LECs must offer evidence that the federal requirement would cause undue economic burdens beyond those typically associated with competitive entry. In regard to the petitions filed in the aforementioned dockets, Verizon contends that the filings are not supported by sufficient facts or economic analysis to justify suspension or modification of the LNP requirement. Verizon notes that other state commissions have rejected similar petitions based on the fact that the LECs

failed to meet the legal burden of proof that is required for a permanent suspension.⁵

While recognizing Section 251(f)(2) of the 1996 Act provides LECs with the mechanism to file for a suspension or modification of local number portability obligations, Verizon calls attention to the fact that the FCC has provided the following guidance relative to this statutory provision:

We believe Congress intended exemption, suspension, or modification of the Section 251 requirements to be the exception rather than the rule, and to apply only to the extent, and for the period of time, that policy considerations justify such exemption, suspension or modification. We believe that Congress did not intend to insulate smaller or rural LECs from competition, and thereby prevent subscribers in those communities from obtaining the benefits of competitive local exchange service. Thus, we believe that, in order to justify continued exemption once a bona fide request has been made, or to justify suspension, or modification of the Commission's Section 251 requirements, a LEC must offer evidence that application of those requirements would be likely to cause undue economic burdens beyond the economic burdens typically associated with competitive entry.⁶

Verizon asserts that the applicable LECs have failed to meet their burden of proof and have failed to demonstrate that suspension or exemption from LNP is warranted. The company points out that the FCC has previously stated:

[T]he public interest is served by requiring the provisions of number portability to CMRS

⁵ See Petition of CenturyTel of Michigan, Inc. and CenturyTel Midwest-Michigan, Inc., Case No. U-13729, Opinion and Order (rel. December 9, 2003); Petition of Multiple Communications Companies for a Suspension of Wireline-to-Wireless Number Portability Obligations, Case No. 03-C-1508, Order (rel. April 19, 2004) (herein CenturyTel Michigan Order).

⁶ *Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499, ¶1262 (1996).

[commercial mobile radio service] providers because number portability will promote competition between providers of local telephone services and thereby promote competition between providers of interstate access services.⁷

Verizon notes that the FCC's rules requiring intermodal, local number portability followed multiple extensions and challenges to the rules at the FCC and the D.C. Circuit Court of Appeals. Further, Verizon contends that the FCC has previously determined that blanket waivers of the local number portability requirements are "unnecessary and may hamper the development of competition in areas served by smaller and rural LECs that competing carriers want to enter."⁸ Therefore, absent a high degree of proof, Verizon advocates that the Commission deny the pending petitions. Verizon considers the applicants' petitions to be nothing more than a request for the Commission to reconsider the FCC's prior rulings regarding intermodal, local number portability.

In response to the LECs' assertions that the intermodal, local number portability requirement will result in increased surcharges on subscriber bills and increased local residential rates, Verizon points out that wireless customers have also incurred price increases due to local number portability. Verizon states that, since both wireline and wireless carriers must bear the costs of local number portability, only a truly exceptional demonstration of an undue cost could justify a special exception from the local number portability requirement. Verizon points out that the Michigan Public Service Commission determined that the rural incumbent local exchange companies (ILECs) requesting relief in Michigan had not demonstrated costs different from, or more burdensome than, the costs of wireless carriers. Therefore, the Michigan Public Service Commission determined that the rural telephone

⁷ *Telephone Number Portability*, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd. 8432, ¶153 (1996).

⁸ *Telephone Number Portability*, First Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd 7236, ¶¶112-23 (1997).

companies must implement and bear the costs of portability if they receive a BFR.⁹

In regard to the applicants' assertion that its cost may increase due to the transporting of calls to ported numbers outside of their local service area, Verizon believes that these concerns are premature because:

- (a) It assumes a specific outcome from a pending FCC docket considering this issue.
- (b) It estimates costs absent key variables such as porting volumes and intercarrier compensation rules for hauling traffic to and from ported numbers.

Verizon rejects all claims that it is infeasible for the rural LECs to implement LNP. The company posits that a requirement is technically infeasible only in the event that the technology necessary for compliance is unavailable. Therefore, Verizon asserts that a determination of technical infeasibility is independent of concerns regarding cost. Verizon considers the technical concerns raised by the applicants to be no different from those confronted by all carriers throughout the nation.

- (6) On April 30, 2004, the applicants filed a motion to strike objections and memoranda contra of Sprint and Verizon or, in the alternative, memorandum contra.¹⁰ As a preliminary matter, the applicants contend that the Sprint and Verizon filings are untimely inasmuch as the Commission has not granted intervenor status to either entity.

Further, the applicants state that the filings of Sprint and Verizon focus on the timeliness of the requests and adverse impact on competition rather than adequately addressing the arguments raised by the LECs regarding the alleged cost-prohibitive expenses that would be incurred in order to implement wireline-to wireless number portability.

⁹ CenturyTel Michigan Order at 6.

¹⁰ The Commission notes that on May 11, 2004, the applicants also filed a motion to strike objections and memorandum contra of Verizon Wireless or, in the alternative, memorandum contra. As noted above, the applicants made a similar filing on April 30, 2004. Therefore, the filing of May 11, 2004 will not be considered.

With respect to the issue of timeliness, the applicants provide that the alleged economic impact is unaltered by the date on which the underlying applications were filed. The applicants believe that the Commission has sufficient time to decide whether the requested suspensions are warranted. The applicants assert that neither Sprint nor Verizon have alleged that wireless consumption will be adversely affected by the non-implementation of LNP in the affected service areas. The applicants also claim that there is no evidence that either Sprint or Verizon has significantly altered its position or incurred costs in contemplation of intermodal, local number portability being implemented by May 24, 2004, or that there is public demand for intermodal, local number portability that will not be met if the pending petitions are granted.

In response to Sprint's criticism of the applicant's reliance on estimated costs to support the pending petitions, the applicants respond that telecommunications providers routinely utilize estimates in conducting cost studies and projecting costs of provisioning new services. The applicants assert that the estimates set forth in the applications accurately illustrate the burdens associated with the provision of intermodal, local number portability.

In regard to Sprint's criticism of the applicants' reliance on estimates of expenses related to the transport of calls to commercial mobile radio service providers, the applicants note that only Kalida maintains a trunk group from Sprint over which local calls can be transported. The applicants acknowledge that, if commercial mobile radio service providers were to provision trunk groups to each ILEC, the issue of transport costs would be avoided. However, the applicants contend that the commercial mobile radio service providers are seeking free access to the ILECs' facilities. As support for its contention, the applicants represent that over the past number of years, commercial mobile radio service providers have consistently routed terminating traffic to rural ILECs' facilities without interconnection agreements or compensation to the affected rural ILEC.

In response to Sprint's and Verizon's contention that the pending applications are anticompetitive and detrimental to their respective abilities to compete for customers, the applicants allege that, in actuality, denial of the pending

petitions will result in increased rural ILEC rates. As a result, rural ILEC customers will be encouraged to abandon wireline service and pick a less expensive CMRS provider. Without customers, the applicants contend that they will be unable to continue operations. In order to preserve competition, the applicants believe that CMRS carriers need to negotiate points of presence, trunk groups, and interconnection with rural ILECs, and the costs associated with LNP would be shared among carriers in a manner proportionate to the benefit received.

The applicants reject Sprint's contention that, in the absence of direct trunk groups with the commercial mobile radio service providers, it is still technically feasible to route ported calls to commercial mobile radio service providers by routing customers over existing trunk groups connecting the ILECs' networks to the LATA switch. The applicants assert that such an approach is infeasible since toll facilities cannot be used to transport ported calls to Sprint's point of presence when such calls should be local in nature.

- (7) Pursuant to the Commission's Entry of May 19, 2004, Sprint's and Verizon's motions to intervene were granted and the applicants' motion to strike the objections of Sprint and Verizon was denied. Additionally, the Commission determined that the applicants have failed to adequately demonstrate that the implementation of the intermodal LNP requirement is technically infeasible. With respect to the applicants' waiver request premised on the economic burden of intermodal LNP, the Commission granted each of the applicants an interim 90-day waiver of their intermodal local number local number portability obligations in order to allow the Commission to complete its review of the applicable costs alleged by the applicants.

The Commission, in its Entry of May 19, 2004, recognized that a substantial portion of the costs offered in support of the companies' contention of economic burden pertain to the expense of negotiating traffic termination agreements and the cost of transport. The Commission noted that one possible approach to mitigating the economic burdens raised by the applicants is the negotiation of transport and termination agreements with commercial mobile radio service providers. To this end, the Commission expressed its desire for the

parties, including commercial mobile radio service providers, to pursue negotiations relative to establishing rates, terms, and/or conditions for interconnection, including LNP. The Commission directed each party to file a statement relative to its intention to pursue traffic termination agreements, as well as agreements pertaining to the provisioning of LNP.

- (8) On June 18, 2004, Verizon and Sprint each filed its response regarding its intentions regarding pursuing interconnection and LNP agreements.¹¹

Verizon states that it has already negotiated and filed with the Commission interconnection agreements with the following incumbent local exchange companies: (a) New Knoxville, (b) Benton Ridge, and (c) Doylestown Telephone Company. Further, Verizon Wireless represented that it has initiated discussions with, or otherwise responded to carrier-generated bills from, the following incumbent local exchange companies: (a) Fort Jennings Telephone Company, (b) Germantown Independent Telephone Company, (c) Kalida Telephone Company, (d) Ottoville Mutual Telephone Company, and (e) Sycamore Telephone Company.

Finally, although it does not include provisions regarding LNP in its interconnection agreements, Verizon indicates that it has sought to exchange trading partner profiles with the companies it has sent bona fide requests for LNP, separate and apart from interconnection agreements. While it does not believe that it is required to do so, the company explains that it has offered to negotiate Service Level Agreements with carriers to facilitate porting of customer numbers between carriers.

Sprint represents that it will negotiate in good faith with any telecommunications carrier wanting to commence interconnection negotiations. In addition, Sprint reiterates many of the same arguments raised in its April 15, 2004 memorandum contra the applications to suspend or modify the intermodal obligations discussed *supra*.

On June 23, 2004, the applicants filed their response to the Commission's Entry of May 19, 2004. In conjunction with its

¹¹ Verizon made its filing in all of the above captioned cases with the exception of 04-434, 04-436, 04-442, 04-446, 04-447, and 04-449. Sprint filed its response in all of the above captioned cases with the exception of Case Nos. 04-428, 04-438, and 04-448.

filing, the applicants submitted a motion for extension of time for the purpose of considering its submission as being timely filed. The applicants contend that additional time was necessary in order to compile a complete and accurate response, which adequately considers all aspects of each applicant's negotiations regarding transport and termination.

The applicants report that on August 22, 2003, the Ohio Small Local Exchange Carrier Association (OSLECA), an association of which all of the applicants are members, made a request to the Commission for the ability to utilize OSLECA Hardship Funds in order to support the joint small local exchange company development and negotiation of interconnection agreements with wireless carriers operating in Ohio, including but not limited to AT&T Wireless, Cingular, T-Mobile, Nextel, and Sprint PCS. This request, as well as a subsequent one for additional funding, was approved pursuant to the Commission Entries of September 11, 2003, and June 9, 2004, in Case No. 97-414-TP-UNC, *In the Matter of the Commission's Oversight Concerning the Ohio Small Local Exchange Carrier Association*.

Notwithstanding the aforementioned OSLECA endeavor, the applicants state that a few of the small local exchange companies have individually secured traffic termination agreements with some the wireless carriers. Each agreement provides for reciprocal compensation for the termination of local traffic originating on one party's network and terminating on the other party's network. These agreements are as follows:

- a) Case No. 93-378-RC-AIA - Bascom Mutual and ALLTEL Communications,
- b) Case No. 04-817-TP-NAG - Benton Ridge and Verizon Wireless,
- c) Case No. 04-2229-TP-NAG - Doylestown and Verizon Wireless,
- d) Case No. 02-2166-TP-NAG - Kalida and Sprint Spectrum,
- e) Case No. 04-816-TP-TP-NAG - New Knoxville and Verizon Wireless, and

f) Case No. 92-1171-TP-AIA - Sherwood Mutual and Centennial Cellular.

The applicants point out that the local interconnection agreements identified above explicitly exclude traffic exchanged through an interexchange carrier, as well as the transport of a call to a number ported to a wireless carrier which has no point of interconnection within the rate center where the port occurred.

With regard to the negotiating of agreements related to the provisioning of LNP, although the applicants acknowledge having received Number Portability Agreements, Trading Partner Profiles, or other documents from wireless providers, the incumbent local exchange companies have stated that they do not intend to execute these agreements while the current waiver applications are pending.

- (9) Relative to the applicants' motion for extension of time, the Commission finds that the request is reasonable and should be granted.
- (10) Pursuant to the Intermodal Order, wireline carriers operating in areas outside of the top 100 MSAs were granted a waiver until May 24, 2004, of the requirement that these carriers port numbers to wireless carriers that do not have a point of interconnection or numbering resources in the rate center where the customer's wireline number is provisioned.¹² The requirement to implement intermodal, local number portability is applicable to all local exchange companies, unless granted a suspension of the obligation pursuant to 47 U.S.C. §251(f)(2).

In reviewing a petition from a rural carrier for a suspension or modification of the requirement to provide local number portability, state commissions must consider whether the request is necessary:

- (a) To avoid significant adverse economic impact on users of telecommunications services generally.
- (b) To avoid imposing a requirement that is unduly economically burdensome.

¹² Intermodal Order at ¶29.

- (c) To avoid imposing a requirement that is technically infeasible.

Additionally, the Commission must determine that the requested suspension or modification is consistent with the public interest, convenience, and necessity.

In performing its duties pursuant to Section 251(f)(2) of the 1996 Act, the Commission must conclude that the petitioners have provided substantial, credible evidence that there are substantial circumstances that warrant departure from the existing requirements.¹³ A review of the pending petitions reflects that the costs are premised on the following arguments:

- (a) The implementation of wireline-to-wireless local number portability will cause significant adverse economic impact on end users of the applicants' telecommunications services.
- (b) The implementation of wireline-to-wireless local number portability may be unduly economically burdensome to the applicant.
- (c) Wireline-to-wireless local number portability is currently technically infeasible.

In reviewing the submitted applications with respect to the contentions of adverse economic impact on end users of the applicants, the Commission recognizes that a company-proposed local number portability surcharge can only include carrier-specific costs directly related to providing local number portability. Carriers must demonstrate that the costs (1) would not have been incurred by the carrier but for the implementation of local number portability, and (2) were incurred for the provision of local number portability. The potential local number portability surcharge must be consistent with the FCC's Memorandum Opinion and Order, December 14, 1998, CC Docket 95-116, *In the Matter of Telephone Number Portability Cost Classification Proceeding*.

The Commission is still reviewing the applicants' costs to determine whether implementation of wireline-to-wireless LNP could cause significant adverse economic impact on the end

¹³ *Id.* at ¶30.

users of the applicants' telecommunications services and could be unduly economically burdensome on the applicants. The Commission has concerns about the potential economic burden on Ohio companies and their customers, given that many of the applicant companies have fewer than 1,000 customers over which to spread the costs. To date, the most the FCC has allowed any carrier throughout the nation to recover through an end user LNP surcharge is \$.74 per access line per month. To the extent that LNP costs are not recovered by an end user LNP surcharge, and considering other costs associated with routing and transporting wireline-to-wireless calls, the applicants may have to seek to recover these LNP-related costs through increased monthly subscriber rates. The Commission must consider the overall public interest in determining whether the requested relief should be granted. Without completing our financial review and without knowing whether wireline-to-wireless LNP is something which applicants' customers would find beneficial, it is hard for the Commission to judge at this point whether the benefits to be gained by applicants' customers with intermodal LNP, outweigh the potential increased rates applicants' customers will have to pay.

The Commission also recognizes that the Chairman of the FCC, in a recent letter to the President of the National Association of Regulatory Utility Commissioners, expressed concern regarding the economic burden that small, rural, local exchange companies may incur as a result of the deployment of intermodal local number portability. It now appears that the FCC is considering to adopt a Second Further Notice of Proposed Rulemaking to assess the impact of the LNP rules on rural carriers.

Pursuant to its Entry of May 19, 2004, the Commission determined that the applicants have failed to adequately demonstrate that the implementation of the intermodal LNP requirement is technically infeasible. However, in light of the current uncertainty relative to the economic burden of small, rural, local exchange companies, the Commission believes that it is appropriate to grant a temporary waiver in the pending applications until the LNP obligations of the small, rural, local telephone companies and the role of the state commissions is clarified. During this intervening period of time, it will be beneficial for the applicants to assess the public desire for intermodal LNP within their respective service territories and to

submit this information to the Commission staff and, if necessary, the FCC as part of its further deliberations. The applicants are directed to work with the Commission staff to perform such an analysis.

The Commission notes that the degree of economic burden may change as a result of developments in LNP-related technology. Notwithstanding this Finding and Order, to the extent that one or more of the applicants intend to implement intermodal LNP in the future, such activity would be encouraged by the Commission.

Finally, although the applicants are granted a temporary waiver of their intermodal LNP obligations, commercial mobile radio service providers may still continue to market service in the applicants' service areas to those customers willing to be assigned a new telephone number or a telephone number ported from another wireless provider.

- (11) Although the applicants are granted a temporary waiver, the companies are still required to provide the capability for the querying of the local routing number in order to allow for the completion of the call to a ported telephone number.¹⁴
- (12) On May 24, 2004, the Commission staff issued a data request to a number of small, local exchange telephone companies regarding the receipt of a bona fide request to provide LNP. As of the date of this Finding and Order, the Pattersonville Telephone Company has yet to respond to this request. Within 15 days of this Finding and Order, the company must notify the Commission staff as to the status of its LNP deployment.

It is, therefore,

ORDERED, That the applicants are granted a temporary interim waiver of their local number portability obligations consistent with Finding (10). It is, further,

ORDERED, That the applicants' work with the Commission staff for the purpose of assessing the public desire for intermodal LNP. It is, further,

ORDERED, That the applicants provide the capability to query the local routing number consistent with Finding (11). It is, further,

¹⁴ Telephone Number Portability, Third Report and Order, CC Docket No. 95-116, rel. May 12, 1998, at ¶¶ 20, 21.

ORDERED, That the Pattersonville Telephone Company notify the Commission staff as to the status of its LNP deployment within 15 days of this Finding and Order. It is, further,

ORDERED, That a copy of this Finding and Order be served upon all parties and all interested persons of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Alan R. Schriber, Chairman

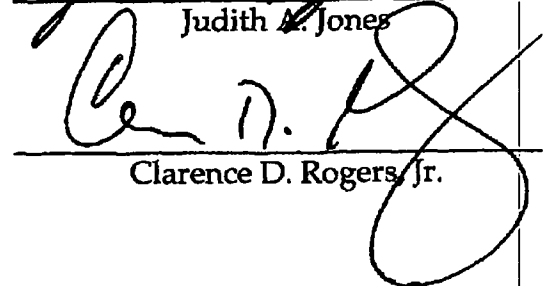


Ronda Hartman Fergus



Judith A. Jones

Donald L. Mason

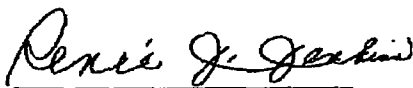


Clarence D. Rogers, Jr.

JSA;geb

Entered in the Journal

JUL 20 2004



Renee J. Jenkins

Renee J. Jenkins
Secretary

BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Application) Application Nos. C-3096,
of Great Plains Communications,) C-3110, C-3111, C-3112,
Inc., et al. for Suspension or) C-3113, C-3114, C-3115,
Modification of the Federal Com-) C-3116, C-3117, C-3118,
munications Commission Require-) C-3119, C-3120, C-3121,
ment to Implement Wireline-) C-3122, C-3128, C-3146,
Wireless Number Portability) C-3153, C-3154
Pursuant to 47 U.S.C.)
§251(f)(2).¹)
)
)
)
In the Matter of the Application) Application Nos. C-3132,
of Arapahoe Telephone Company,) C-3133, C-3134, C-3135,
et al. for Suspension or) C-3136, C-3137, C-3138,
Modification of the Local Number) C-3139, C-3140, C-3141,
Portability Requirements of the) C-3142, C-3143, C-3147
Federal Communications)
Commission, pursuant to) ORDER GRANTING SUSPENSION
§251(f)(2) of the)
Telecommunications Act of 1996,)
as Amended.²) Entered: July 20, 2004

APPEARANCES:

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¹Applicants Clarks Telecommunications Co.; Consolidated Companies; Dalton Telephone Company, Inc.; Eastern Nebraska Telephone Company, Elsie Communications, Inc.; Great Plains Communications, Inc.; Hamilton Telephone Company; Hartington Telecommunications Co., Inc.; Hemingford Cooperative Telephone Company; Hershey Cooperative Telephone Company, Inc.; K&M Telephone Company, Inc.; Nebraska Central Telephone Company; Northeast Nebraska Telephone Company; Pierce Telephone Co.; Rock County Telephone Company; Sodtown Telephone; Stanton Telecom, Inc.; and Three River Telco are represented by Woods & Aitken, LLP.

²Applicants Arapahoe Telephone Company; Benkelman Telephone Company, Cozad Telephone Company; Curtis Telephone Company; Diller Telephone Company; Glenwood Telephone Membership Corporation; Hartman Telephone Company; Hooper Telephone Company, d/b/a WestTel Systems; Keystone-Arthur Telephone Company; Mainstay Communications; Plainview Telephone Company; Southeast Nebraska Telephone Company; and Wauneta Telephone Company are represented by Rembolt Ludtke & Berger, LLP.

Application Nos. C-3096, C-3110 to C-3122,
C-3128, C-3146, C-3153, C-3154, C-3132 to
C-3143, C-3147

Page 2

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BY THE COMMISSION:

B A C K G R O U N D

By 31 separate applications filed by rural telephone companies beginning with Great Plains Communications, Inc. (Great Plains) on January 27, 2004, and most recently filed by Elsie Communications, Inc., on March 9, 2004, said carriers are seeking a suspension or modification of the Federal Communications Commission (FCC) requirement to implement local number portability (LNP). Notice of the filing of each of the applications was published in The Daily Record, Omaha, Nebraska, in accordance with Nebraska Public Service Commission (Commission) Rules of Procedure. Petitions for Formal Intervention were filed by WWC License, LLC (Western Wireless) in each of the 31 applications. Similarly, a Petition for Formal Intervention was filed by Verizon Wireless in Application No. C-3096, and Petitions for Formal Intervention were filed by Sprint Corporation in Application Nos. C-3096, C-3112, C-3116, C-3117 and C-3119. AT&T Wireless Services, Inc. filed Petitions for Informal Intervention in each of the 31 applications.

On February 23, 2004, Great Plains filed a Motion for Order Granting Interim Relief Pursuant to 47 U.S.C. § 251(f)(2) and Request for Oral Argument. On February 25, 2004, the Commission issued a notice of oral argument regarding such Motion, and oral argument was held on March 2, 2004, with all parties represented by counsel. By Order dated March 3, 2004, the Commission granted interim relief to Great Plains pursuant to Section 251(f)(2) from the requirements of 47 U.S.C. § 251(b)(2) and the *Intermodal Order* "until a date later to be determined by the Commission."

On March 12, 2004, Sprint Corporation filed a Motion for Rehearing and/or Clarification of the Commission's March 3, 2004, Order granting interim relief to Great Plains. On April 6, 2004, the Commission entered its Order Denying Motion for Rehearing and/or Clarification.

Subsequent to March 3, 2004, the Commission entered Orders granting the motions for interim relief from the requirements of 47 U.S.C. § 251(b)(2) and the *Intermodal Order* to each of the Applicants pursuant to Section 251(f)(2) "until a date later to be determined by the Commission" based on reasoning consistent with the Order granting interim relief to Great Plains.

On March 16, 2004, the Commission issued an Order Setting Planning Conference to be held on March 22, 2004. In recognition of the requirement of Section 251(f)(2) that the Commission shall act on a petition filed under such provision within 180 days after receiving such petition,³ the Commission entered its Order on March 30, 2004, that established a schedule for completion of discovery, submission of pre-filed direct and rebuttal testimonies, scheduled a hearing and provided for the submission of proposed orders by the parties, all to be completed by July 6, 2004.

By Motion dated April 16, 2004, Verizon Wireless sought leave to withdraw its Petition for Formal Intervention filed in Application No. C-3096. Similarly, on April 27, 2004, Sprint Corporation sought leave to withdraw all of its Petitions for Formal Intervention. By Orders dated May 4, 2004, the Commission granted such requests to withdraw.

A public hearing on these applications was held on June 2-4, 2004. The Applicants offered testimony by Steven E. Watkins, Dan Davis and David P. McElhose. Intervener, Western Wireless, offered testimony by Ron Williams.

O P I N I O N A N D F I N D I N G S

We have for consideration a total of 31 applications filed by rural telephone companies pursuant to 47 U.S.C. § 251(f)(2) seeking suspension or modification of the requirements of 47 U.S.C. § 251(b)(2) concerning number

³The 180-day period following the Commission's receipt of the Great Plains Petition expires on July 26, 2004.

portability, and in particular, suspension or modification of the requirements set forth *In the Matter of Telephone Number Portability*, CC Docket 95-116, Memorandum Opinion and Order and the Further Notice of Proposed Rulemaking, FCC 03-284 (rel. November 10, 2003) (the *Intermodal Order*)⁴, insofar as the Order requires these Applicants to implement wireline-to-wireless LNP.⁵

The *Intermodal Order* obligates local exchange carriers located outside the top 100 metropolitan statistical areas (MSAs) to provide LNP and to port numbers to wireless carriers when certain conditions have been met. Such obligation commenced on May 24, 2004, or commences within six months of the date that the wireline carrier receives a bona fide request for LNP from a commercial radio service (CMRS) provider.⁶

In Section 251(f)(2), Congress granted state commissions jurisdiction to suspend or modify the application of a requirement of Section 251(b) or (c) for rural carriers.⁷ The language of Section 251(f)(2) reads, in pertinent part, as follows:

(2) Suspensions and modifications for rural carriers . . . The State commission shall grant such petition to the extent that, and for such duration as, the State commission determines that such suspension or modification:

(A) is necessary:

(i) to avoid a significant adverse economic impact on users of telecommunications services generally;

(ii) to avoid imposing a requirement that is unduly economically burdensome; or

⁴The Commission notes that the appeal of the *Intermodal Order* is pending in *United State Telecom Association v. FCC*, Cases No. 03-1414 & 03-1443 (D.C. Cir.) and that a copy of the Brief of Petitioners as filed in such appeal was entered in this record as Exhibit 149.

⁵The parties have agreed that the record shall be a consolidated record that is available for use in connection with all 31 applications (T520:13-521:3), and the Hearing Officer confirmed that the record should apply to all 31 applications. (T521:4-6)

⁶See, *Telephone Number Portability*, CC Docket No. 95-116, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 8352, 8394, ¶ 80 (1996) and *Intermodal Order* at ¶ 29.

⁷It is undisputed that each of the applicants in the 31 pending applications is a "rural telephone company" as such term is defined in 47 U.S.C. § 153(37).

(iii) to avoid imposing a requirement that is technically infeasible; and

(B) is consistent with the public interest, convenience, and necessity.

Commission Jurisdiction Over these Dockets

The Congress delegated jurisdiction to state commissions to receive petitions by rural telephone companies for suspension or modification of the requirements of Section 251(b) and (c). No persuasive challenge to the Commission's jurisdiction to act upon these applications has been made,⁸ and the Commission finds that it possesses jurisdiction to hear and dispose of each of the applications filed herein.

The Rural Telephone Companies' Burden of Proof

In the *First Report and Order* issued by the FCC that contains the FCC's findings and rules pertaining to implementation of the Telecommunications Act of 1996 (the Act),⁹ the FCC addressed the standard that state commissions were to follow in determining whether rural telephone companies are entitled to suspensions or modifications as set forth in Section 251(f)(2) of the Act. In paragraph 1262 of the *First Report and Order* the FCC found that "to justify suspension, or modification of the Commission's section 251 requirements, a local exchange carrier must offer evidence that application of those requirements would be likely to cause undue economic burdens beyond the economic burdens typically associated with efficient competitive entry." This finding, with regard to Section 251(f)(2) applications, was codified in 47 C.F.R. § 51.405(d).

Section 51.405(d) was among the provisions challenged in *Iowa Utils. Bd. v. F.C.C.*, 120 F.3d 753 (8th Cir. 1997) (*IUB I*). In its review of the Eighth Circuit's decision in *IUB I*, the United States Supreme Court in *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999), directed the Eighth Circuit to review, on its merits, 47 C.F.R. § 51.405 regarding rural exemptions.¹⁰ In *IUB II*, the Eighth Circuit made the following finding concerning

⁸See, Exhibit 101, p. 3.

⁹In the *Matter of Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, 11 FCC Rcd 15499 (1996), FCC 96-325 (*First Report and Order*).

¹⁰See, *Iowa Utils. Bd. v. F.C.C.*, 219 F.3d 744, 748 (8th Cir. 2000) (*IUB II*)

Section 51.405: "Subsections (c) and (d) of rule 51.405 are an unreasonable interpretation of the statute's requirement that a § 251(b) or § 251(c) request made by a competitor must not be "unduly economically burdensome" to the small or rural ILEC."¹¹ Accordingly, the Eighth Circuit vacated Section 51.405(d). Although *IUB II* was again appealed to the United States Supreme Court, and was reversed in part,¹² the Court allowed the Eighth Circuit's holding that vacated Section 51.405(d) to stand. The Applicants therefore argued the Eighth Circuit's decision in response to the *Verizon* decision left standing the vacation of Section 51.405(d)¹³ and the FCC has not amended or otherwise re-enacted Section 51.405(d).¹⁴

On the basis of the Applicants' argument, we find that the burden of proof is on each of the Applicants to establish entitlement to a suspension or modification of the requirements of the *Intermodal Order* in accordance with 47 U.S.C. § 251(f)(2) without reference to Section 51.405(d). The Applicants are required to establish at least one of the criteria listed in Section 251(f)(2)(A), and that the suspension or modification "is consistent with the public interest, convenience and necessity" as provided in Section 251(f)(2)(B).

Section 251(f)(2)(A)(iii) Technical Infeasibility

The Applicants and Western Wireless present very divergent assessments as to whether intermodal LNP is technically feasible for the Applicants in view of the existing network and trunking arrangements.¹⁵ We observe that the North American Number Council (NANC) advised the FCC in its Report dated May 18, 1998, that unresolved issues exist as a consequence of the differences in the local serving areas of wireless and wireline carriers.¹⁶ The Applicants provided testimony that neither the FCC itself, nor with the assistance of NANC, resolved the issues presented in the 1998 Report prior to releasing the *Intermodal Order*.

¹¹*Id.* at 762.

¹²*Verizon Communications, Inc. v. F.C.C.*, 535 U.S. 467 (2002) (*Verizon*).

¹³*Iowa Utils. Bd. v. F.C.C.*, 301 F.3d 957 (2002).

¹⁴T.125:8-11.

¹⁵For example, Mr. Watkins states in his prepared direct testimony, Exhibit 100, p. 16, that absent a direct connection between the CMRS provider and a particular Applicant, calls to a ported number will require completion through use of an interexchange carrier. On the other hand, Mr. Williams states in his prepared direct testimony, Exhibit 216, 11:8-13:5, that routing issues are not a real barrier to implementation of intermodal LNP.

¹⁶See, Exhibit 101, pp. 6-8.

We believe that absent a direct connection between the network of the CMRS provider and the rural local exchange carrier, that facilities are not currently in place in the Nebraska telecommunications network architecture that allow the implementation of intermodal LNP absent imposition of a requirement on the Applicants to transport local exchange traffic outside of the rural local exchange carrier's service area to a distant point (typically the tandem switch at which the CMRS provider has a point of interconnection). Calls to a point outside of the carrier's network are generally carried by interexchange carriers.¹⁷ We gave in depth consideration to this issue in Application No. C-2872 and concluded that in the Great Plains exchanges where Western Wireless had not requested a direct connection to Great Plains, Great Plains shall continue to route calls originating from its exchanges to Interexchange Carriers in compliance with its equal access and toll dialing parity requirements.¹⁸

We conclude that in light of our decision in Application No. C-2872, the Commission's current rules, the existing network architecture, intermodal LNP in the context of indirect connections between a CMRS provider and a local exchange carrier is technically infeasible at this time. We note that a determination as to which carrier is responsible for transport costs when the routing point for the wireless carrier's switch is located outside the wireline local calling area in which the number is rated,¹⁹ is pending before the FCC.

Because we conclude that the applicants have met their burden to prove that intermodal LNP is technically infeasible, we do not need to address sections 251(f)(2)(A)(i) or (ii) which turn on the economic impact on the users and the applicants. Nevertheless, we will generally discuss and analyze the evidence produced by the parties with respect to those issues.

Section 251(f)(2)(A)(i) Significant Adverse Economic Impact on
Users

Each of the Applicants in the pending dockets submitted pre-filed testimony of either Mr. Dan Davis (Davis) or Mr. David P. McElhose (McElhose) and testimony at the hearing setting

¹⁷Exhibit 101, pp. 8-10.

¹⁸In the Matter of the Petition of Great Plains Communications, Inc., Application No. C-2872, Interconnection Agreement as Modified (Sept. 23, 2003) at paras. 44-52.

¹⁹See, Intermodal Order at FN. 75 and paras. 39-40.

forth the costs associated with the implementation of LNP.²⁰ Western Wireless' witness, Mr. Ron Williams (Williams), submitted pre-filed rebuttal testimony to which revised cost estimates for each of the Applicants' implementation of LNP were attached.²¹

In an effort to assimilate the rather considerable amount of cost data contained in the Davis and McElhose exhibits, the Commission has created a spreadsheet attached to this Order as Appendix I. Similarly, to assimilate and display Williams' revisions to the Applicants' cost data, the Commission has created a second spreadsheet attached to this Order as Appendix II. Both Appendix I and Appendix II contain confidential and proprietary information that is subject to the Protective Order entered by the Commission in these Applications. Thus, these Appendices will be redacted from copies of this Order made available to persons that are not parties to the Protective Order. Reference to these appendices will facilitate a comparison of the parties' cost calculations.

We believe that our consideration of the applications for suspension or modification filed pursuant to Section 251(f)(2) should be on the basis of company-specific cost data rather than multi-company data when multiple applications are involved. This position is consistent with the holding of the North Carolina Utilities Commission in intermodal LNP cases that it considered pursuant to Section 251(f)(2).²²

The Applicants have presented their cost data separated as non-recurring costs of LNP implementation without and including transport costs, and recurring costs of LNP implementation without and including transport costs. The methodology utilized by the Applicants in preparing the cost data for each Applicant's implementation of LNP is explained on a line-by-line

²⁰The pre-filed direct testimonies, cost exhibits and company-specific cost data sponsored by Davis are Exhibits 102 through 122. The pre-filed direct testimonies, cost exhibits and company-specific cost data sponsored by McElhose are Exhibits 127 through 143. The pre-filed rebuttal testimony of Davis is Exhibit 123, and the pre-filed rebuttal testimonies of McElhose are Exhibits 143 and 145. In addition, Exhibit 144 consists of cost exhibits produced to Western Wireless in 18 of the pending dockets.

²¹Williams' pre-filed rebuttal testimony is Exhibit 217 and the cost estimates originally attached thereto were separately marked and received in evidence as Exhibit 215.

²²See, Exhibit 157, *In the Matter of Petition by the Alliance of North Carolina Independent Telephone Companies for Limited Modification of the Requirement to Provide Number Portability*, Docket No. P-100, Sub. 133r (N.C. Util. Comm., Oct. 7, 2003) at p. 3.

basis in the Davis Direct Testimony.²³ The FCC allows recovery of carrier-specific costs directly related to providing LNP from users of telecommunications service over a 5-year period.²⁴

Based on the cost data submitted by each of the Applicants, and the revisions thereto by Western Wireless, all as compiled in Appendix I and II attached hereto, we find that the differences in the Applicants' monthly non-recurring costs per user calculations when compared to Western Wireless' monthly non-recurring costs per user calculations are not material to our consideration as to whether LNP implementation creates a "significant adverse economic impact" on users of telecommunications. By way of illustration only since our evaluation of these applications is proceeding on a company-specific basis, Williams' calculation of the non-recurring implementation costs for all Applicants, excluding transport, is \$2,546, 670 versus Applicants' calculation of \$2,796,556 - a difference of \$249,886.²⁵ When this amount is divided by the total access lines served by all of the Applicants (92,055), and the resulting amount is recovered over a 60-month period using an 11.25 percent discount rate, the differential is less than \$0.06 per month.

With regard to monthly recurring costs, excluding transport, Williams criticized the amounts included in the Applicants' cost calculations for service order administration (SOA) monthly charges, LNP query costs and switch maintenance costs.²⁶ We find that the explanation of SOA monthly charges provided by Davis is reasonable.²⁷ We realize that with the limited customer base of the Applicants, and the currently small demand for LNP (further discussed below), the applicants may need to account for a "learning plateau" that will create efficiency and reduce the time required to perform ports in their cost estimates. Based on the foregoing, we believe that the calculations of LNP monthly recurring costs for each of the Applicants may represent fair and reasonable estimates of such costs.

²³Exhibit 102 at pp. 5-12. McElhose adopted and agreed with Davis' description of the process utilized to compile and develop the costs to implement LNP for the Applicants on whose behalf McElhose submitted pre-filed direct testimony. See, e.g., Exhibit 130 at p. 3.

²⁴See, 47 C.F.R. § 52.33.

²⁵See Appendix I and II.

²⁶Exhibit 217, 6:13-7:7 and T.353:2-362:2.

²⁷T.163:12-164:10 and Exhibit 123, pp. 6-7.

The matter of non-recurring and recurring transport costs is problematical. First, the parties are in agreement that the FCC has yet to determine the party that should bear the costs of transport outside of the local exchange area of the local exchange carrier.²⁸ Thus, at this point, irrespective of the amount of transport costs to be recovered, it is not possible to conclude whether such costs may be included in the end user surcharge. However, it appears that such costs may be borne either by the end users by inclusion in the surcharge, or by the local exchange carrier.²⁹ Although we cannot resolve the issue of who will bear the costs of transport, we are in a position to evaluate the evidence in the record addressing the amount of such costs.

The Applicants have included amounts in their non-recurring cost estimates for constructing direct connections between the CMRS providers and the Applicants' networks, and have included amounts in their recurring cost estimates for the monthly costs of such direct connections. Davis testified that this trunking arrangement is necessary to avoid customer confusion and dropped calls, and to comply with the interconnection principles previously ordered by this Commission in Application No. C-2872.³⁰ On the other hand, Williams criticized the Applicants' use of direct connections as inefficient and proposed to use an interconnection arrangement that he described as more efficient.³¹

The Commission agrees with Mr. Watkins' testimony that the Applicants do not currently have a duty to construct transport facilities for the purpose of transporting wireline-wireless traffic outside of their local exchange service areas.³² The Commission further believes that direct connections between CMRS providers and the Applicants' networks are properly required in order to route LNP traffic. However, in light of the uncertainties surrounding transport obligations and the entities that will bear transport costs, we will not engage in speculation as to whether Western Wireless' or the Applicants' position regarding transport costs should be accepted. In taking this position, however, we nonetheless find that transport costs would indeed be a part of the costs associated with implementation of LNP, and that such costs would either be an additional significant adverse economic impact on end users

²⁸T.238:2-13 and 405:2-9.

²⁹T.237:18-238:1 and 402:3-15.

³⁰T.166:2-167:25. and Exhibit 123, pp. 7-8.

³¹Exhibit 217, T.7:8-19 and 8:12-9:16.

³²See, Exhibit 101, pp. 8-10.

or would be an undue economic burden on the local exchange carriers were these extraordinary costs to become a responsibility of the Applicants.

The residential 1-party rate benchmark in Nebraska is \$17.50 per month (without taxes and surcharges).³³ The monthly costs of LNP implementation, excluding transport, calculated by Williams ranges between \$0.49 and \$7.65.³⁴ We have included in these amounts taxes and surcharges of 12 percent. The monthly costs of LNP implementation based on the Applicants' calculations, and inclusive of a 12 percent tax and surcharge amount, range from \$0.64 to \$12.23.³⁵

We believe that the range of end user charges established by the evidence in the record, even excluding costs of transport, is significant in light of the absence of demand for intermodal LNP as demonstrated by evidence in this record. (Demand is discussed in greater detail below.) Based on the foregoing, we believe suspension of the requirements of the *Intermodal Order* would be necessary for the Applicants in order to avoid a significant adverse economic impact on users of telecommunications services generally.

Section 251(f)(2)(A)(ii) Undue Economic Burden on Carrier

In its consideration of the "undue economic burden" language of Section 251(f)(2)(A)(ii), the Eighth Circuit Court of Appeals stated: "In the Act, Congress sought both to promote competition and to protect rural telephone companies as evidenced by the congressional debates."³⁶ The Court continued by stating: "It is the full economic burden on the ILEC of meeting the request that must be assessed by the state commission."³⁷

As stated above,³⁸ it appears that any expenses associated with implementation of intermodal porting that are not recovered by the Applicants from the end users may be borne by the Applicants. The Applicants testified to a number of circumstances that may result in implementation costs that are

³³See, T.236:18-237:10 and Exhibit 143, Attachment A.

³⁴Williams testified that the monthly cost of LNP implementation that he calculated for Sodtown Telephone Company's subscribers would not be appropriately imposed under Section 251(f)(2)(A)(i). T.325:20-326:25.

³⁵T.158:3-6.

³⁶*IUB II* at 761.

³⁷*Id.*

³⁸See, paragraph 22 *supra*.

not recoverable from the end users. These include costs incurred, but not includable in tariffs filed with the FCC pursuant to 47 C.F.R. § 52.33; and additional costs that are identified after the end user tariff rate for the 5-year recovery is established.³⁹

Further, as the Applicants submit, transport costs may be determined by the FCC to be unrecoverable from end users through the surcharge. As illustrated by Appendix I hereto, the non-recurring and recurring costs of transport relating to direct connections are significant. Even the costs estimated by Western Wireless for the "efficient" transport that Western Wireless promotes may be material as illustrated by Appendix II.

An additional pending issue that will have a significant impact on the costs of LNP implementation relates to the Further Notice of Proposed Rulemaking included in the *Intermodal Order* concerning shortening of the porting interval. The evidence in the record demonstrates that in the event the FCC determines that the interval for intermodal porting should be shortened, the economic burden on the Applicants could be very significant.⁴⁰

In connection with our consideration of the economic burden of implementing intermodal LNP, we are also mindful of the precautionary statements contained in FCC Chairman Michael Powell's June 18, 2004 letter to the President of NARUC, a copy of which is attached hereto as Appendix III. In such letter, Chairman Powell states: ". . . I urge state commissions to consider the burdens on small businesses in addressing those waiver requests and to grant the requested relief if the state commissions deem it appropriate."

Based upon the information that the Applicants have been able to assemble relating to the costs to implement intermodal LNP, and the uncertainties that currently exist with regard to the extent to which currently identified or future costs of such implementation will fall upon the rural local exchange carriers, suspension of the requirements of the *Intermodal Order* appears necessary to avoid imposing a requirement on the Applicants that is unduly economically burdensome.

³⁹T.242:21-243:16, 423:4-424:19; Exhibit 101, pp. 10-11; and Exhibit 102, pp.16-17

⁴⁰See, Exhibit 102, pp. 14-15; Exhibit 123, pp. 4-5; and T.168:16-170:19, 487:25-488:19.

Section 251(f)(2)(B) Consistent with Public Interest,
Convenience and Necessity

On the basis of the foregoing analysis and findings, the Commission concludes that the Applicants have each sustained their burden to prove the requirements of 47 U.S.C. §§ 251(f)(2)(A) with regard to the Applicants' requested suspensions of the implementation of the *Intermodal Order*. However, the Applicants must also establish that the requested suspensions are consistent with the public interest, convenience and necessity pursuant to 47 U.S.C. § 251(f)(2)(B).

The Commission believes that its determination of the public interest in these cases inherently involves a cost versus benefit analysis. The costs to end users of telecommunications services and to these Applicants of implementing intermodal LNP has been thoroughly analyzed previously in this Order. An analysis of the benefits of such implementation turns on whether there is a demand for intermodal LNP among the telecommunications users served by the Applicants. As will be discussed more fully below, the Commission finds that the evidence in the record establishes that no such demand exists.

The Applicants' witness, Mr. Steven E. Watkins (Watkins), testified that all of the Applicants had been canvassed with regard to any request by any end user or wireless carrier to port a wireline number to a wireless telephone, and that no such request had been received by any Applicant as of the date of the hearing.⁴¹ When Williams was asked whether Western Wireless possessed any data that contradicted this absence of demand, he testified that he did not.⁴²

In balancing the costs and benefits at stake in this case, we believe that an 18-month suspension of the LNP implementation requirement is appropriate. We believe that the Applicants continue to face the technical obstacles observed by the FCC in its January 16, 2004 Order which held that,

. . . [I]n order to offer intermodal portability to their subscribers, these smaller carriers must acquire the hardware and software necessary to provide porting, make the necessary network upgrades, and ensure that their upgraded networks work

⁴¹T.35:20-36:7.

⁴²T.450:11-18.

reliably and accurately. Some of the Petitioners also assert that Two Percent Carriers often lack the experience and technical experience with number porting to quickly implement the necessary upgrades to their systems to ensure accurate porting. Accordingly, we conclude that special circumstances exist to grant Two Percent Carriers who have not previously upgraded their systems to support LNP a limited amount of additional time to overcome the technical obstacles they face to successfully meet a request for wireline-to-wireless porting.⁴³

An 18-month suspension of the LNP requirements should give the Applicants adequate time to make necessary upgrades and to prepare for intermodal portability. In addition, we do not believe that the limited 18-month suspension would adversely impact consumers. According to the Applicants, they have seen no demand for intermodal LNP from its wireline customers.

Mr. Williams testified that public interest means consumer choice and that LNP is about elimination of a barrier for consumer choice.⁴⁴ While the Commission acknowledges that introduction of competition into telecommunications markets is a key policy of the 1996 Telecommunications Act, without any evidence that demand for intermodal LNP exists and thus, that consumer choice is being thwarted, this Commission must assign greater weight to another Congressional policy of the Act. Further, by granting the suspension requested, the carriers may avoid wasting resources while the clarification necessary to effectively and efficiently implement wireline to wireless number portability is undertaken on the federal level.

Based on the evidence in the record before the Commission, we find that each of the Applicants has sustained its burden of proof pursuant to 47 U.S.C. § 251(f)(2)(B) that suspension of the requirements of the Intermodal Order is consistent with the public interest, convenience, and necessity.

⁴³See In Re Telephone Number Portability, CC Docket No. 95-116 (January 16, 2004).

⁴⁴T.313:7-15.

Decisions by Other State Commissions Regarding Section 251(f)(2)
Petitions

Although not a part of our consideration of the 251(f)(2) test, we believe the decisions of other state commissions regarding Section 251(f)(2) petitions for suspension of the implementation of the *Intermodal Order* by rural telephone companies are also persuasive. The NeuStar matrix introduced by the Applicants lists decisions and pending cases regarding Section 251(f)(2) applications before state commissions. While a number of the listed cases are pending for decision, suspensions of LNP implementation have been granted by some state commissions including: Colorado (suspension through May 24 2006); Illinois, (suspension to November 24, 2006); Utah, (suspension to May 24, 2005); and West Virginia, (suspension to April 20, 2005).⁴⁵ Subsequent to the date of the NeuStar matrix, the Mississippi Public Service Commission granted suspensions to a group of 17 rural telephone companies.⁴⁶ A number of other state commissions have reached decisions consistent with our findings granting rural telephone companies suspensions of the duty to implement the *Intermodal Order*.

O R D E R

IT IS THEREFORE ORDERED by the Nebraska Public Service Commission that based on the findings set forth herein, each of the Applicants has met its burden of proof to receive a suspension of its obligation to implement intermodal local number portability pursuant to 47 U.S.C. § 251(b)(2), as such obligation has been interpreted and ordered for implementation by the FCC pursuant to the *Intermodal Order*, and such implementation obligations are hereby suspended in accordance with 47 U.S.C. § 251(f)(2).

IT IS FURTHER ORDERED that such suspensions shall remain in effect until January 20, 2006, unless otherwise ordered by the Commission. Prior to the expiration of such suspension period, the Applicants may seek further relief under 47 U.S.C. § 251(f)(2) based upon the circumstances that prevail at that time. An application for further relief shall be filed on or before July 20, 2005, to give the Commission time to decide whether additional time is appropriate pursuant to 47 U.S.C. § 251(f)(2).

⁴⁵Exhibit 147.

⁴⁶Exhibit 148.

Application Nos. C-3096, C-3110 to C-3122,
C-3128, C-3146, C-3153, C-3154, C-3132 to
C-3143, C-3147

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MADE AND ENTERED in Lincoln, Nebraska on this 20th day
of July, 2004.

NEBRASKA PUBLIC SERVICE COMMISSION

COMMISSIONERS CONCURRING:

Chairman

ATTEST:

Executive Director